

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN ALLEN,
Plaintiff,

v.

L. TOBIN, et al.,
Defendants.

Case No. [15-cv-01075-JCS](#) (PR)

**ORDER DENYING SECOND
MOTION FOR THE APPOINTMENT
OF COUNSEL**

Dkt. No. 15

Plaintiff moves for the second time for the appointment of counsel (Docket No. 15), alleging that his poverty, lack of education and legal knowledge, dyslexia and other learning disabilities, and his having to rely on the assistance of a fellow inmate warrant the appointment of counsel.

The decision to request counsel to represent an indigent litigant under 28 U.S.C. § 1915 is within “the sound discretion of the trial court and is granted only in exceptional circumstances.” *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of “exceptional circumstances” requires an evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability to articulate his claims pro se in light of the complexity of the legal issues involved. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). Neither the need for discovery, nor the fact that the pro se litigant would be better served with the assistance of counsel, necessarily qualify the issues involved as complex. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997).


The motion fails to show exceptional circumstances exist. First, the case does not present legally or factually complex issues. Second, many of the circumstances plaintiff

1 describes, such as a lack of legal knowledge, are difficulties all prisoner-plaintiffs must
2 face. Furthermore, he has been able to file, with the assistance of a fellow inmate,
3 articulate, reasoned motions and other documents with the Court. Counsel therefore is not
4 required, and plaintiff has not shown that extraordinary circumstances exist. Accordingly,
5 the motion is DENIED.

6 The Clerk shall terminate Docket No. 15.

7 **IT IS SO ORDERED.**

8 **Dated:** April 20, 2016

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10 JOSEPH C. SPERO
11 Chief Magistrate Judge
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 20, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kevin Allen ID: K-41879
Kern Valley State Prison
P.O. Box 5101
Delano, CA 93216

Dated: April 20, 2016

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO